

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DATATERN, INC.,

Plaintiff,

v.

ELI LILLY AND COMPANY, et al.,

Defendants.

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Case No. 2:10-CV-00413-RWS-RSP

ORDER

Before the Court is the Report and Recommendation filed by Magistrate Judge Payne on April 9, 2017 (Docket No. 262) recommending that Defendants' motion to dismiss for lack of prosecution be granted, and that Datatern's complaint be dismissed without prejudice. No objections have been filed by Datatern. Defendant Volkswagen objects to Judge Payne's recommendation to dismiss Datatern's complaint without prejudice, *see* Docket No. 263, but as the Report explains, a dismissal without prejudice is "usually appropriate before dismissing with prejudice." Docket No. 262 at 2 (quoting *Nottingham v. Warden, Bill Clements Unit*, 837 F.3d 438, 441 (5th Cir. 2016)). Accordingly, it is

ORDERED that Volkswagen, Aflac, and Walgreen Company's motions to dismiss for failure to prosecute, Docket Nos. 253-255, be **GRANTED**. Datatern's Complaints against these Defendants are **DISMISSED WITHOUT PREJUDICE**. The clerk is directed to close this case.

SIGNED this 8th day of May, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE